IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8880 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BADRINISA W/O ABDUL RAHIM

Versus

STATE OF GUJARAT

Appearance:

MR JA SHELAT for Petitioner

MR SK PATEL, AGP for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 08/12/2000

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order directing the respondents to pay family pension,

amount of gratuity and provident fund amount payable to her in respect of services rendered by her late husband Shri Abdul Rahim Abdul Mukim Pathan.

2. Society for Prevention of Cruelty to Animals ("the Society" for short), which is having its Office near Animal Hospital, Opp: V.S.Hospital, Ellisbridge, Ahmedabad, is a trust registered under the provisions of the Bombay Public Trusts Act, 1950. It is not controlled or managed or financed by the State of Gujarat. The Society was formed in the year 1888 and was registered as a Public Trust on October 9, 1952. One of the principal objects of the Society is prevention of cruelty to animals and welfare of animals within the limits of Ahmedabad Municipal Corporation and Cantonment of Ahmedabad. The Society receives various donations in addition to its membership subscription. Late Shri Abdul Rahim Abdul Mukim Pathan was employed as part-time employee of the said Society. Late Shri Pathan was issued a certificate under section 47 of the Bombay Police Act in January, 1952 by the District Superintendent of Police, Ahmedabad city so as to enable him to perform his duties as an additional police officer for the purposes of sections 3, 3-A, 4, 5, 5-A, 5-B, 6, 6-A, 7, 7-A, 7-A-L and 14 of the Bombay Prevention of Cruelty to Animals Act and section 119 of the Bombay Police Act. This certificate is produced by the petitioner at Annexure-A to the petition. The General Secretary of the Society by an order dated April 21, 1954 had transferred late Shri Pathan to its Dhandhuka Office as Inspector, Society for Prevention of Cruelty to Animals. He was directed to report himself for duty to (1) Shri D.S.Bhavsar, Member of Panjara Pole at Dhandhuka, (2) First Class Magistrate at Dhandhuka and (3) Sub-Inspector of Police at Dhandhuka and submit his charge report to the Head Office soon after taking charge. Accordingly, the deceased had resumed duties at Dhandhuka. The deceased retired from the Society on August 8, 1977 and at that time his consolidated pay was Rs. 135/per month. On retirement, he was paid an amount of Rs. 3,259.53 ps. towards full payment of his dues including provident fund amount. The petitioner claims that though the amount towards provident fund was deducted from her husband's salary every month by the respondents, the provident fund amount is not paid to her after her husband's death and she is entitled to the same. The petitioner has averred that her late husband had put in about 27 years of continuous service in police department and placing reliance on the certificate produced at Annexure-A, has claimed that as her late husband was in government service, she is entitled to the

amount of provident fund, gratuity and family pension on the death of her husband. The petitioner has extensively referred to the provisions of sections 4 & 5 of the Bombay Police Act as well as Bombay Civil Service Rules and asserted that she is entitled to family pension, gratuity as well as provident fund on the death of her husband. Under the circumstances, the petitioner has filed present petition and claimed relief to which reference is made earlier.

3. It may be stated that initially the Society was impleaded as respondent no.4 and Mr. I.M.Kantawala, Hon.Secretary of the Society had filed reply affidavit controverting the averments made in the petition. In the said reply, it was inter-alia contended that as the Society is not controlled or managed or financed by the State Government, the Society is not a "State" within the meaning of Article 12 of the Constitution and the petition against the Society was not maintainable. It was also pointed out in the said reply that on his retirement, late Shri Pathan was paid an amount of Rs. 3,259.53 ps. towards payment due on account of provident fund and a receipt dated January 4, 1978 evidencing the payment of amount of provident fund to the deceased was also produced with the reply. From the record of the petition, it appears that in view of the contention raised by the Society to the effect that it was not a "State" within the meaning of Article 12 of the Constitution, the name of the Society was deleted from the petition pursuant to Court's order dated June 18, 1990.

4. Mr. M.D.Meena, the then Deputy Commissioner of Police, Administration, in the Office of Commissioner of Police, Ahmedabad City had filed reply affidavit controverting the averments made in the petition. In the reply it was emphasized that deceased Pathan was never appointed as a police officer by the District Superintendent of Police, Ahmedabad, nor any salary was ever paid to him and, therefore, the petition should be dismissed. The claim advanced by Mr. Meena in the reply affidavit was that the deceased was an employee of the Society and was never employed as a police officer at any point of time. In order to substantiate this claim, order dated April 21, 1954 passed by the General Secretary of the Society transferring late Shri Pathan from Ahmedabad to its Dhandhuka Office as Inspector was produced along with the reply.

5. Mr. Chitturi S.Prasad, Additional Commissioner of Police (Admn.), Shahibaug, Ahmedabad has filed further

affidavit dated September 22, 2000 and stated that the husband of the petitioner was never appointed as a police officer, nor was empowered to perform duties as a police officer, but a certificate was issued to him under section 47 of the Bombay Police Act by the then District Superintendent of Police to enable him to perform his duties as an additional police officer for the purposes of sections 3, 3-A, 4, 5, 5-A, 5-B, 6, 6-A, 7, 7-A, 7(A)(L) and 14 of the Bombay Prevention of Cruelty to Animals Act and section 119 of the Bombay Police Act, but on the basis of the said certificate, neither the deceased was, nor the petitioner is entitled to pensionary benefits. Mr. Prasad has also produced, along with further affidavit, a letter dated August 10, 2000 addressed by the Society to the Commissioner of Police,Ahmedabad city, wherein it is mentioned that for prevention of cruelty to animals, some of the persons were employed, but they were never treated as government employees and were not entitled to pensionary benefits. The said letter further indicates that the husband of the petitioner was relieved from service on August 8, 1977 and at that time, his pay was Rs. 135/- per month.

6. It may be stated that the learned Single Judge of this Court by an order dated September 28, 1990 issued following directions :

> "Interim relief directing the respondents authorities to release an amount of family pension within 4 weeks subject to the result of the petition on undertaking being supplied by the petitioner that in case she will lose in the petition, she will repay the said amount. Such undertaking tobe filed in this court by the petitioner within a period of 2 weeks and copy whereof is to be supplied to the respondents."

Pursuant to the above-referred to order, the petitioner had filed an undertaking on oath before the Court on October 9, 1990, but Shri S.K.Patel, learned A.G.P. on instructions from Mr. C.J.Christian, discharging duties as Senior Clerk in D-4 Branch of the Office of Police Commissioner, Ahmedabad City, states at the Bar that the amount of family pension has not been released in favour of the petitioner during the pendency of the petition.

7. I have taken into consideration the contentions urged at the Bar as well as documents forming part of the petition. From the record of the case, it is evident that the claim of the petitioner for family pension,

gratuity and provident fund amount payable in respect of services rendered by her late husband is solely based on the certificate which was issued by the District Superintendent of Police, Ahmedabad city inthe month of January, 1952. The certificate which is produced at Annexure-A to the petition makes it abundantly clear that it was issued to enable late Shri Pathan to perform his duties as an additional police officer for the purposes of sections 3, 3-A, 4, 5, 5-A, 6, 6-A, 7, 7-A, 7(A)(L) & 14 of the Bombay Prevention of Cruelty to Animals Act and section 119 of the Bombay Police Act. A bare reading of section 47 of the Bombay Police Act, 1951 makes it manifest that it does not contemplate any appointment of any police officer by the District Superintendent of Police. Section 47 reads as under :-

"47. Employment of additional police on application of a person -

(1) The Commissioner or Superintendent may, on the application of any person, depute any additional number of Police to keep the peace, to preserve order or to enforce any of the provisions of this or any other Act in respect of any particular class or classes of offences or to perform any other police duties at any place in the area under his charge.

(2) Such additional Police shall be employed at the cost of the person making the application, but shall be subject to the orders of the Police authorities and shall be employed for such period as the appointing authority thinks fit.

(3) If the person upon whose application such additional Police, are employed, shall at any time make a written requisition to the appointing authority to which the application for the employment of additional Police was made, for the withdrawal of the said Police, he shall be relieved from the cost thereof at the expiration of such period not exceeding one month from the date of the delivery of such requisition as the State Government or the appointing authority, as the case may be, shall determine."

This section relates to employment of additional police force in order to keep peace, or to preserve order in respect of any particular class or classes of offences or to perform duties at any place in the area concerned.

To provide protection to citizens is one of the primary duties of the State and this section, inter-alia, provides that when additional police is employed at the cost of the person making the application, the additional police so employed will be subject to the orders of the police authorities and shall be employed for such period as the appointing authority thinks fit. However, if the person upon whose application such additional police are employed makes a written requisition to the appointing authority for withdrawal of the said police, such person at whose instance additional police force was made available stands relieved from the cost thereof at the expiration of such period not exceeding one month from the date of delivery of such requisition as the State Government or the appointing authority, may determine. Thus, the claim of the petitioner that her husband was appointed as a police officer under section 47 of the Bombay Police Act has no substance. In fact, detailed procedure is laid down under the said Act as well as Rules framed thereunder for the purpose of making appointment of a police officer. It is not the case of the petitioner that her late husband had applied for any post in the police department and that after regular selection, he was selected and employed as a police officer. Moreover, if the late husband of the petitioner had been appointed as police officer in January, 1952, he could not have been transferred to Dhandhuka Office of the Society by the General Secretary of the Society on April 21, 1954. This fact itself belies the claim of the petitioner that her husband was appointed as a police officer. If late husband of the petitioner had been appointed as a police officer, he could not have been transferred by the Society, but could have been transferred only by the competent police officer. On overall view of the matter, I am of the opinion that the petitioner has failed to establish her claim that her late husband was appointed as a police officer and, therefore, on his death, she is entitled to family pension or gratuity amount or provident fund amount as claimed in the petition. As stated by the Society in its letter dated August 10, 2000, which is addressed to the Commissioner of Police, Ahmedabad City, no employee employed by the said Society is ever treated as a government servant and the deceased was relieved from service on August 8, 1997 and was paid the amount due to him payable by the Society towards his provident fund. Therefore, the claim advanced by the petitioner that her husband was a government servant and so, she should be granted the relief claimed in the petition is factually baseless and is liable to be rejected.

For the foregoing reasons, the petition fails and is dismissed. As no amount of family pension was released in favour of the petitioner by the respondents-authorities, no further directions are required to be issued to the petitioner to repay the amount of family pension to the respondents. Having regard to the facts of the case, the petitioner stands relieved from the undertaking which she had filed on October 9, 1990. Subject to this clarification, rule is discharged, with no order as to costs.

(J.M.Panchal,J.)

(patel)